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U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Global Caps, Inc.

Serial No. 74/659,784

A. Todd Merolla of Strelzik & Shapiro, P.A. for Global Caps, Inc.

Mary J. Rossman, Trademark Examining Attorney, Law Office
109 (Ronald R. Sussman, Managing Attorney).

Before Cissel, Hohein and Hairston, Administrative
Trademark Judges.

Opinion by Cissel, Administrative Trademark Judge:

On April 12, 1995, applicant applied to register the mark "GLOBAL CAPS" on the Principal Register for "clothing, namely, caps and shirts," in Class 25. The application was based on applicant's claim of use of the mark in interstate commerce since February 10, 1994.

The Examining Attorney required applicant to disclaim the descriptive word "CAPS" apart from the mark as shown,

and refused registration under Section 2(d) of the Lanham Act based on several registered trademarks. Prior-filed applications for registration of trademarks with which the Examining Attorney thought applicant's mark might be likely to cause confusion were also noted, but in each instance, the application was subsequently abandoned.

All but one of the registered marks cited by the Examining Attorney were subsequently withdrawn as bars to registration under Section 2(d). This application is now before the Board on appeal from the Examining Attorney's final refusal to register based on Registration No. 1,807,625¹ and the final requirement that applicant disclaim the word "CAPS." Both applicant and the Examining Attorney filed appeal briefs, but applicant did not request an oral hearing before the Board.

Turning to the refusal to register based on likelihood of confusion, we first note that the cited registration is for the mark "GLOBAL GEAR," and the goods specified in that registration are as follows: "men's, women's and children's clothing; namely, T-shirts, shirts, tank tops, sweatshirts and shorts," in Class 25.

¹ Issued on the Principal Register to Global Gear International Clothing Company, a California partnership, on November 30, 1993. The descriptive word "GEAR" was disclaimed apart from a mark as shown.

In view of the partial overlap in the goods enumerated in the application and the cited registration, (both include "shirts"), the issue of whether confusion is likely turns on whether, as applied to these identical goods, the mark sought to be registered, "GLOBAL CAPS," is substantially similar to the cited registered mark, "GLOBAL GEAR."

The Examining Attorney has pointed out several legal principles which may come into play in determining whether marks are so similar that confusion is likely. In particular, the marks must be considered in their entireties for similarities in appearance, sound, meaning and commercial impression. In re Mack, 197 USPQ 755 (TTAB 1997). The issue is not whether distinctions between the marks could be made if they were to be compared next to each other, but rather, the focus should be on the recollection of the average purchaser, who normally retains a general, rather than specific, impression of trademarks. Visual Information Institute, Inc. v. of Vicon Industries Inc., 209 the USPQ 179 (TTAB 1982); Chemtron Corp. v. Morris Coupling & Clamp Co., 203 USPQ 537 (TTAB 1979). Although some elements of the marks may be entitled to greater weight, the ultimate conclusion as to whether confusion is likely rests on consideration of the marks in

their entireties. In re National Data Corp., 732 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985).

In the case now before us, the Examining Attorney contends that confusion is likely because the marks, "when considered in their entireties, create highly similar commercial and overall impressions" (brief, pp. 4,5) by virtue of the fact that each combines the suggestive term "GLOBAL" with a generic term for apparel, which the Examining Attorney finds does not provide a sufficient basis for consumers to distinguish between the two marks. To the contrary, we find that confusion is not likely because when these marks are considered in their entireties, they are not substantially similar in appearance, in pronunciation, or in meaning. The commercial impressions they create are distinctly different.

Although both marks include the term "GLOBAL," each mark combines this suggestive term with a different, generic (and hence disclaimed) word. The term "GLOBAL," while suggestive of the worldwide availability, appeal or usefullness of the apparel items sold under the respective marks of applicant or registrant, is such that when used in conjunction with "CAPS," the combination is quite different than what results when "GLOBAL" is combined with "GEAR" in

the registered mark. These marks are not substantially similar in appearance, pronunciation or meaning. Simply put, because of the differences between "GEAR" and "CAPS," the commercial impressions of these marks, when considered in their entirety, are so different that even when they are used as marks on the same items of apparel, namely shirts, confusion is not likely.

Applicant's chief argument appears to be that the existence of the other four registered marks originally cited, but subsequently withdrawn by the Examining Attorney, demonstrates that marks which include the suggestive term "GLOBAL" as one component should be allowed to "coexist" on the register. The Board's finding that confusion is unlikely in this case should not be misconstrued as adoption of this argument. The third-party registrations of record do not establish that the marks therein are in use, much less that members of the consuming public for the goods at issue in this appeal are so familiar with the use of marks containing "GLOBAL" as components that they are able to distinguish among them by virtue of differences in the elements with which this term is combined. These third-party registrations do demonstrate, however, that the term "GLOBAL" has a meaning which is suggestive in connection with such goods, and the

suggestiveness of this word can be just as readily established by its dictionary definition, of which we may take judicial notice. The word has the same suggestiveness in each of these two marks, but in light of the differences in meaning, appearance and pronunciation between "CAPS" and "GEAR," when the marks are considered in their entirety, they are not so similar that confusion is likely.

In its appeal brief, applicant offered to comply with the requirement for the disclaimer. Accordingly, a disclaimer of the word "CAPS" will be entered into the record, and the refusal to register under Section 2(d) of the Act is reversed.

R. F. Cissel

G. D. Hohein

P. T. Hairston
Administrative Trademark Judges
Trademark Trial & Appeal Board

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